

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**MICHAEL RODRIGUEZ**

**Plaintiff**

**v.**

**BRYAN TRUCK LINE, INC. AND.**

**CARL J. KIES**

**Defendants**

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**CIVIL ACTION NO.** \_\_\_\_\_

**JURY REQUESTED**

**DEFENDANTS' NOTICE OF REMOVAL**

Bryan Truck Line, Inc. and Carl J. Kies (collectively, "Defendants"), pursuant to 28 U.S.C. §1332, 1441, and 1445, hereby give notice of the removal of this cause of action to the United States District Court for the Western District of Texas. Defendants, as grounds for removal, state the following:

**PROCEDURAL STATUS OF THE CASE**

1. Plaintiff, Michael Rodriguez, filed this action in the 438<sup>th</sup> District Court of Bexar County, Texas on August 14, 2017. It carries the case style of *Michael Rodriguez v. Bryan Truck Line, Inc. and Carl J. Kies*, with Cause No. 2017-CI-15064.

2. Defendant, Bryan Truck Line, Inc., was served with process on September 29, 2017.

3. Defendant, Carl J. Kies, was served with process on October 3, 2017.

4. All pleadings, process, orders, and other filings in the state court action accompany this notice<sup>1</sup>.

5. This Notice of Removal is being filed in the record office of the Clerk of the United States District Court for the Western District of Texas.

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<sup>1</sup> See U.S.C. § 1446(a); S.D. Tex. Loc. R. 81

6. Defendants will promptly file a copy of this Notice of Removal with the District Clerk of Bexar County, Texas.

### **BACKGROUND**

7. This case arises out of a motor vehicle accident that occurred on December 23, 2016. The accident involved Plaintiff's vehicle and a vehicle being driven by Carl J. Kies. Plaintiff alleged that Kies was in the course and scope of his employment with Bryan Truck Line, Inc. at the time of the accident.

8. Plaintiff alleged he is seeking "damages (including punitive damages) over \$1,000,000.00."<sup>2</sup> Plaintiff's complaint stated Plaintiff suffered past and future medical care, lost wages and earning capacity, physical impairment, physical pain and suffering, mental anguish, and disfigurement<sup>3</sup>. Plaintiff alleged that the proximate cause of those damages was Defendants' negligence.

9. Plaintiff has sued Defendants alleging various causes of action of negligence<sup>4</sup>. More specifically, Plaintiff alleged Kies negligently operated his tractor-trailer. Plaintiff also alleged Bryan Truck Line, Inc. was vicariously liable, as well as negligent in its entrustment, hiring, training, supervision, and maintenance<sup>5</sup>.

### **BASIS FOR FEDERAL COURT ORIGINAL JURISDICTION**

10. Complete diversity exists between Plaintiff and Defendants. Plaintiff's petition admits that Plaintiff is a resident of Texas<sup>6</sup>. Plaintiff's petition also correctly states that both

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<sup>2</sup> See Exhibit A, *Pl's Orig. Pet.* ¶1

<sup>3</sup> *Id.* at ¶IX

<sup>4</sup> *Id.* at ¶V – VIII

<sup>5</sup> *Id.* at ¶VI

<sup>6</sup> *Id.* at ¶II

Defendants are residents of Ohio<sup>7</sup>. As aforementioned, Plaintiff is seeking damages in excess of \$1,000,000.00<sup>8</sup>.

### PROPRIETY OF REMOVAL

11. This Notice of Removal is timely because it is filed within thirty (30) days of Defendants' receipt of the Original Petition, in accordance with 28 U.S.C. §1446(b).

13. Both Defendants have consented to removal.

14. Removal is not barred by 28 U.S.C. §1445.

15. Pursuant to 28 U.S.C. §1446(a) and local Rule 81, Defendants, Bryan Truck Line, Inc. and Carl J. Kies, have attached hereto: (1) a copy of all Plaintiff's Original Petition as **Exhibit A**; (2) all executed process in the case as **Exhibits B**; (3) a copy of Defendants' Original Answer, Requests for Disclosure, and Jury Demand as **Exhibit C**; the Docket Sheet from the 438<sup>th</sup> Civil District Court as **Exhibit D**; an Index of Documents being filed as **Exhibit E**; and a list of all Parties as **Exhibit F**. At the time of filing, there were no orders signed by the state judge.

### REQUEST FOR HEARING AND JURISDICTIONAL DISCOVERY

16. If Plaintiff contests this removal, Defendants request:

- (a) a hearing regarding this Court's jurisdiction over, and the propriety of removal of this matter; and
- (b) leave to conduct limited discovery related to issues surrounding the existence of diversity jurisdiction.

### JURY DEMAND

17. Defendants demand a jury trial.

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<sup>7</sup> *Id.*

<sup>8</sup> *See Id.* at ¶I; *see also* 28 U.S.C. §1441(b)(2); 28 U.S.C. §1332

**PRAYER**

Defendants, Bryan Truck Line, Inc. and Carl J. Kies, remove the above-captioned action from the 438<sup>th</sup> Judicial District Court of Bexar County, Texas to the United States District Court for the Western District of Texas.

Respectfully submitted,

**BAIRHILTY, P.C.**

*/s/ Dominick Garza* \_\_\_\_\_

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**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per S. Dist. Tex. Loc. R. LR5.1 on the 30<sup>th</sup> day of October, 2017. A true and correct copy of the foregoing Defendants' Notice of Removal was served upon counsel of record in compliance with the Federal Rules of Civil Procedure by certified mail, return receipt requested, telephonic communications, hand delivery and/or U.S. Mail on this the 30<sup>th</sup> day of October, 2017.

Robert Fischel  
521 Starr Street  
Corpus Christi, TX 78401

**Via fax: 361-985-0601**

*/s/ Dominick Garza* \_\_\_\_\_

Dominick Garza